

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of 47 C.F.R. § 1.1200)

et seq. Concerning Ex Parte)

Presentations in Commission)

Proceedings)

GC Docket No. 95-21

DOCKET FILE COPY ORIGINAL

COMMENTS OF BELL SOUTH

In accordance with the Notice of Proposed Rulemaking, FCC 95-52, released February 7, 1995 ("Notice"), BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby offer comment on the Commission's proposed revisions to its ex parte rules.

BellSouth supports the Commission's efforts to simplify the ex parte rules. BellSouth generally concurs with the modifications to the Commission's ex parte rules regarding rulemaking and policy related dockets. However, BellSouth is concerned that the scope of the exemptions from the ex parte rules contained in proposed § 1.1204 is unduly broad and may invite abuse.

As a general rule, BellSouth believes that the public interest is best served if all ex parte presentations are made a matter of public record under the "permit but disclose" standard. Furthermore, BellSouth believes that the rules should encourage all persons to become parties to proceedings in which they have an interest and wish to

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express an opinion. BellSouth believes that there should be few, if any, cases in which presentations made in permit-but-disclose proceedings should be exempt from disclosure.

BellSouth is concerned that § 1.1204(a) of the Rules will exempt from disclosure broad categories of presentations made in permit-but-disclose proceedings. BellSouth recommends that the Commission eliminate the general exemption from disclosure in permit-but-disclose proceedings contained in § 1.1204(a). Specifically, BellSouth recommends deletion of the words "the disclosure requirements in permit-but-disclose proceedings (§ 1.1206)," from proposed § 1.1204(a).

Removal of the general exemptions from disclosure in permit-but-disclose proceedings would not interfere with the Commission's processes. If the disclosure of a presentation would not be in the public interest, the Commission could still exempt it from disclosure. See, for example, § 1.1200(a) ("Where the public interest so requires in a particular proceeding, the Commission retains the discretion to modify the limitations on ex parte communications."). Furthermore, § 1.1204(a)(8)(iii) still would allow the Commission or its staff to exempt from disclosure any presentation in which "disclosure would interfere with the effective conduct of an investigation." Thus, disclosure would be the general rule in permit-but-disclose proceedings, with non-disclosure being available in those

limited cases in which disclosure would be contrary to the public interest.

BellSouth is particularly concerned with the broad exemptions from disclosure contained in proposed § 1.1204(a)(5) and (6). § 1.1204(a)(5) grants a blanket exemption from disclosure for presentations by another agency or branch of the Federal Government having shared jurisdiction with the Commission. § 1.1204(a)(6) grants a blanket exemption from disclosure of presentations to or from the Department of Justice or the Federal Trade Commission involving a telecommunications competition matter in a proceeding that has not been designated for hearing and in which the relevant agency is not a party. BellSouth believes that if another agency or branch of government wishes to express an opinion about an issue pending in a permit-but-disclose proceeding, that agency or branch either should become a party to the proceeding, or disclose to the public the substance of any ex parte communications made to the Commission or its staff in such proceedings. As noted above, in the rare instance in which another agency provides information to the Commission the disclosure of which would damage the public interest, disclosure can be exempted on a case by case basis.

BellSouth also is concerned that proposed § 1.1204(a)(6) is too broad. Just last October, the Commission amended the general exemption as follows:

The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a telecommunications competition matter in a proceeding which has not been designated for hearing and in which the relevant agency (Department of Justice or Federal Trade Commission) is not a party; provided that, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed no later than at the time of the issuance of the Commission's decision.

In the Matter of Amendment of the Commission's Ex Parte Rules, 9 FCC Rcd 6108 (1994) (emphasis added).

The proposed Rules attached to the Notice delete the emphasized language, however, without explanation or justification.

BellSouth believes that the Commission was correct last October when it stated: "At the same time, the requirement for disclosure of any factual information relied on by the Commission will protect the rights of the parties." Id. Indeed, basic fairness and principles of due process require that factual information placed before the agency that is of decisional significance be disclosed to the parties. See cases cited in the Notice at paras. 20-21. BellSouth therefore urges the Commission to retain the disclosure requirement currently contained in § 1.1204(a)(8) (proposed § 1.1204(a)(6)). BellSouth believes that for the same reasons, the emphasized language also should be added to the proposed section of the Rules dealing with ex parte presentations by other federal agencies or branches of government, § 1.1204(a)(5).

The current rules treat as exempt tariff proceedings prior to investigation. The Notice acknowledges this fact and seeks comment on whether the exempt status of such proceedings should continue. Notice at para. 29. BellSouth believes that prior to investigation, it is appropriate to treat tariff proceedings as exempt. It is important that carriers and Commission staff be able to informally discuss issues raised by carrier-initiated tariffs. Such communications can greatly facilitate clarifications or carrier initiated amendments that may make a formal tariff investigation unnecessary. Therefore, BellSouth recommends that the Commission add "(3) tariff proceedings not designated for investigation" to the list of exempt proceedings in proposed § 1.1204(b) of the Rules.

BellSouth concurs with the Commission's proposals regarding extension of the sunshine blackout period to circulation items. Notice at para. 40. The limited "period of repose" sought by the Commission for matters awaiting the issuance of an order following a vote does not unduly restrict access to the Commission.

BellSouth concurs with the Commission's proposal to exempt from the sunshine period prohibition participation by Commissioners or Commission staff at widely attended meetings or symposia taking place during the blackout period. The language of the proposed rule, § 1.1203(a)(4) is sufficiently narrow to permit Commissioners and

Commission staff to attend or participate in widely-attended speeches and panel discussions, while retaining the prohibition with regard to private presentations at such events.

BellSouth fully concurs with the Commission proposal to expand the scope of the disclosure required by parties making verbal ex parte presentations to include "a concise summary of the entire content of the presentation, including the issues discussed, the positions taken, and all arguments and data presented." For the disclosure to be meaningful to other parties, it must reflect more than the boiler plate currently contained in most ex parte disclosures. BellSouth also concurs in the proposal to extend the time for filing the disclosure to within three days of the presentation. This will afford parties adequate time to prepare the expanded disclosure contemplated by the new rules.

BellSouth also concurs with the Commission's proposal to transfer responsibility for enforcement of the ex parte rules to the Office of the General Counsel, Notice at para. 48, and to require parties with reason to believe that a presentation raises questions of compliance with the ex parte rules to alert the Office of the General Counsel prior to making such presentations. Notice at para. 47.

The proposed revisions to the ex parte rules will clarify the rules, simplify their application, and increase the confidence of the public in the openness of the

Commission's decision making processes. With the changes suggested herein, BellSouth supports the proposals contained in the Notice.

Respectfully submitted,

BELLSOUTH CORPORATION and
BELLSOUTH TELECOMMUNICATIONS, INC.

By their attorney:


A handwritten signature in dark ink, appearing to read "M. Robert Sutherland", is written over a horizontal line.

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April 13, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of April, 1995, serviced all parties to this action with a copy of the foregoing COMMENTS reference to GC Docket 95-21, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


Julia W. Spires

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